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**Response To Comments On
Proposed Amendments To
310 CMR 7.00 et seq.:**

**310 CMR 7.25
“Best Available Controls for Consumer and Commercial Products”**

**Regulatory Authority:
M.G.L. c. 111, Sections 142A through 142M**

October 2007

This information is available in alternate format. Call Donald M. Gomes, ADA Coordinator at 617-556-1057. TDD Service - 1-800-298-2207.

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SUMMARY

In January 2007, the Massachusetts Department of Environmental Protection (MassDEP) proposed amendments to regulations 310 Code of Massachusetts Regulations (CMR) 7.25, accompanied by a Technical Support Document, that would further reduce volatile organic compounds (VOC) emissions from consumer products (e.g., household cleaners, aerosols, etc.) and architectural and industrial maintenance (AIM) coatings (e.g., paints, stains, etc.). The regulations set lower VOC content limits for some existing product categories and establish VOC content limits for several newly-defined product categories. These regulations are part of Massachusetts' strategy to reduce ground-level ozone in order to meet the 8-hour ozone national ambient air quality standard, for which Massachusetts is currently in nonattainment.

MassDEP held two public hearings and solicited oral and written testimony on the proposed regulations in accordance with Massachusetts General Laws (MGL) Chapter 30A. On January 26, 2007, MassDEP published notice of the public hearings and public comment period on the proposed regulatory revisions in both the Springfield Republican and the Boston Globe, and notified interested parties via electronic mail. Public hearings were held on the dates and at the locations specified below and the comment period closed on March 12, 2007.

Hearings Held: Wednesday, February 28, 2007 in Boston, Massachusetts
Friday, March 2, 2007 in Springfield, Massachusetts

This document summarizes and responds to comments that were received during the public comment period. MassDEP appreciates the input from those who testified at the public hearings and submitted written comments. Those who provided comments are listed below:

- Joseph T. Yost, Consumer Specialty Products Association (CSPA), Washington, DC
- Amy Wong, General Electric Aviation, Lynn, MA
- William C. Balek, International Sanitary Supply Association (ISSA), Lincolnwood, IL
- David F. Darling, National Paint & Coatings Association, Inc.
- Heidi K. McAuliffe, National Paint & Coatings Association, Inc.
- Brian Hodgett, Procter & Gamble Company, Boston, MA
- Suzanne H. Smallwood, SAU-SEA Swimming Pool Products, Inc., Southampton, NJ
- F.H. Brewer, S. C. Johnson & Son, Inc., Racine, WI
- Gregory L. Johnson, Sherwin-Williams Diversified Brands
- Frances K. Wu, Cosmetic, Toiletry, and Fragrance Association (CTFA), Washington, D.C.
- Anne Arnold, U.S. EPA, Region 1, Boston, MA

GENERAL COMMENTS

1. Comment: The U.S. Environmental Protection Agency (EPA) is updating its National Consumer Products Rule and National AIM Coatings Rule consistent with the Ozone Transport Commission's (OTC's) consumer products and AIM model rules. MassDEP should rely on these upcoming national regulations to produce the same VOC reductions that would be produced by a Massachusetts-specific rule. MassDEP should hold off on its rulemaking process and instead work with EPA on the national rules.

Response: MassDEP has promulgated its own consumer products and AIM rules. MassDEP believes that until national rules are in place, state-specific rules are the best way to ensure further VOC reductions to help meet the 8-hour ozone standard. MassDEP is encouraged that EPA also is moving forward with national rules and may in the future consider rescinding its own rules if deemed warranted.

2. Comment: MassDEP's rules contain key provisions that differ significantly from the OTC model rules and regulations promulgated by other OTC states. It is important for businesses to have consistent regulations across states. Even slight deviations from state to state in limits, language, or administrative requirements can cause major issues and burdens for businesses. The modifications to the OTC model rule proposed by MassDEP will not result in additional VOC reductions beyond the OTC model rule and will impose unnecessary and significant burdens on the consumer products industry. MassDEP should ensure the final rule is consistent with the OTC model rules.

Response: MassDEP has made several changes to its final AIM and consumer products rules to make them substantially consistent with the OTC model rules. See more detailed responses below.

3. Comment: MassDEP should separate the AIM coatings and the consumer products rules and define the terms related to each rule under that rule's section. The proposed regulation combines the definitions for both rules in one section, which creates unnecessary confusion.

Response: MassDEP has separated the consumer products and AIM coatings regulations to make it clearer which definitions and provisions apply to each regulation.

DEFINITIONS

4. Comment: MassDEP should incorporate the Federal definition of "Volatile Organic Compounds" by reference in its rule so that every time the federal rule changes MassDEP will not need to change its state rules.

Response: MassDEP's air quality regulations (310 CMR 7.00) contain a VOC definition, which is a convenience to the regulated community. MassDEP did not propose to change this definition as part of this rulemaking and therefore has not incorporated by reference the federal VOC definition. In general, when EPA changes the federal definition MassDEP updates its VOC definition to match the federal definition.

5. Comment: MassDEP should revise the definition of “Floor Coating” to replace the word “designed” by the word “formulated”.

Response: MassDEP has made this change to the “Floor Coating” definition in the final regulation.

APPLICABILITY

6. Comment: Since MassDEP proposed to adopt AIM coating VOC limits that are more stringent than current federal standards, and the regulation applies to “users” of these coatings, facilities that routinely use AIM coatings will have a new obligation to verify the compliance status of coatings they use, which often are from other states. Because materials safety data sheets (MSDS) are not consistent in format and because different product categories have different VOC limit requirements, it can be difficult to verify whether a product is compliant. Adopting the proposed regulations will impose a greater regulatory burden on facilities that use a diverse assortment of AIM coatings from manufacturers in numerous states.

Response: The lower AIM VOC limits in the final regulation are consistent with the OTC model rule and California’s Suggested Control Measures for AIM Coatings, which have been adopted in most states within in the Northeast and California. MassDEP believes that the primary compliance obligation is on manufacturers and others who sell AIM coatings products into Massachusetts. However, MassDEP believes that users of AIM products (e.g., painting contractors) also should bear responsibility for ensuring they are using compliant products.

7. Comment: The OTC model rule applies the revised VOC standards to consumer products manufactured on or after its effective date. In contrast, it appears that MassDEP’s proposed rule, beginning on January 1, 2009, prohibits the sale of any product that exceeds the specified limits, even if it was manufactured prior to January 1, 2009. This is unjustified and is inconsistent with MassDEP’s proposed 3-year “sell-through” of products manufactured prior to January 1, 2009

Response: MassDEP believes the commenter has misinterpreted the proposed rule. The new lower VOC limits apply only to products manufactured on or after January 1, 2009. Products manufactured prior to that date that are compliant with the standards in effect at the time of manufacture (i.e., the existing federal limits in 40 CFR Part 50) may be sold after January 1, 2009. To clarify the regulatory language, MassDEP has added the January 1, 2009 effective date to the heading of the table of standards.

8. Comment: An effective date of January 1, 2009 for the new VOC limits is reasonable and will allow sufficient time for formulators to ensure that products sold or offered for sale in Massachusetts comply with the new VOC standards.

Response: MassDEP agrees with this comment.

SELL-THROUGH OF PRODUCTS

9. Comment: MassDEP should allow an indefinite “sell-through” of products manufactured prior to January 1, 2009, consistent with other OTC states. The sell-through limitation places an unreasonable burden on manufacturers and retailers to police the extremely small number of non-compliant products that may still be in circulation after three years, with a disproportionate part of this burden placed on smaller businesses where products may not move out of inventory as quickly as at large retailers with “just-in-time” distribution systems. A 3-year sell-through will require a good corporate citizen to trace through his distribution network and seek out those outlets that might have older products. This is an extremely burdensome process and will result in very little air quality benefits.

Response: In the final regulation, MassDEP has removed the general 3-year sell-through limitation applicable to VOC content standards in 310 CMR 7.25(12)(c)3. for consumer products because experience in the other OTR states is that most consumer products move through the marketplace rather quickly and this approach is less burdensome to small businesses. However, consistent with the OTC model rule, MassDEP has retained the 3-year sell-through limitation for certain consumer products that contain methylene chloride, perchloroethylene, or trichloroethylene and the 1-year sell-through limit for Solid Air Fresheners and Toilet/Urinal Care Products.

MassDEP has retained the 3-year sell-through limitation for AIM coatings in part based on experience in New York where certain paint manufacturers apparently stockpiled noncompliant coatings to be sold well into the future beyond the compliance date of the new lower standards. MassDEP wants to avoid a similar situation in Massachusetts. A 3-year sell-through limitation on AIM coatings is consistent with AIM rules in New York, Connecticut, and Maine. In addition, most of the other OTR states adopted similar AIM coatings VOC limits effective January 1, 2005, so compliant products already are available in the Northeast, and therefore, it is reasonable to expect that all coatings sold in Massachusetts should be compliant by 2012 (the end of the 3-year sell-through for AIM coatings).

10. Comment: MassDEP should eliminate the sell-through notification requirements.

Response: Since MassDEP has adopted an indefinite sell-through provision for consumer products, the sell-through notification requirement is no longer needed and has been eliminated.

MOST RESTRICTIVE LIMIT

11. Comment: The proposed “Most Restrictive Limit” provision in consumer products regulation, 310 CMR 7.25(12)(c)2., would apply to “any sales, advertising, or technical literature supplied by a manufacturer or anyone acting on his behalf.” This provision goes beyond the parallel provision of the OTC Model rule and CARB’s Consumer Products Regulation, which apply the provision only to the representations made on the entire product label, including any stickers affixed to the label. This provision expands the potential liability of a manufacturer who could be held responsible for claims made without its knowledge or its consent by a retail sales representative or some other party deemed to be acting on its behalf. It could result in an entirely

unreasonable restriction on the ability to market the product and to freely discuss product uses and benefits with customers.

Response: MassDEP has revised the Most Restrictive Limit provision in the consumer products regulation to be consistent with the OTC model rule, so that this provision applies only to the label and packaging materials of a product, including any affixed stickers. MassDEP had originally drafted its most restrictive limit rule on a draft proposal being considered in California that was never adopted. MassDEP believes its rule should be consistent with the current California and OTC rules.

EXEMPTIONS

12. Comment: The proposed regulations exempt from the VOC standards any products manufactured in Massachusetts that are intended for sale outside of Massachusetts. MassDEP should expand this provision to include the OTC model rule language to exempt a manufacturer or distributor from liability for the presence of a non-compliant product in Massachusetts if the manufacturer or distributor has taken reasonable precautions to prevent such an occurrence. It is foreseeable that despite reasonable efforts to ensure that non-compliant products are not sold (or offered for sale) in Massachusetts, a non-complaint product intended to be shipped to another state may inadvertently be sold by a Massachusetts retailer.

Response: MassDEP has added the OTC model rule language to clarify its intent that manufacturers should make efforts to prevent non-complaint products from being sold in Massachusetts but that a manufacturer will not be held responsible for noncompliant products provided the manufacturer took reasonable precautions to prevent such an occurrence.

13. Comment: The proposed regulation will ban the manufacture of any regulated consumer product category that contains one of nine listed ozone-depleting compounds but omits an exemption found in the OTC model rule that allows for use of these compounds in the existing products that comply with the newly proposed VOC limits or existing products that are reformulated to meet the newly proposed VOC requirements if the ozone-depleting compound content of the reformulated product does not increase. To provide for consistent interpretation and enforcement throughout the Northeast and Mid-Atlantic Region, MassDEP should add this exemption into the regulation.

Response: MassDEP has added the exemption language in the final regulation consistent with the OTC model rule.

VOC CONTENT LIMIT STANDARDS

14. Comment: Lowering the limit for swimming pool paints would lead to elimination of swimming pool rubber-based paints. The remaining swimming pool paints on the market (i.e., water-based and two-part solvent-borne epoxy paints) are not friendlier to the environment and they pose their own environmental problems. Water-based paints normally require annual recoat and require twice the amount of paint to cover the same area as rubber-based paint, so there is no reduction in VOCs emitted, and the more frequent recoats increases waste from empty cans, etc.

Solvent-borne epoxy paints contain bisphenyl A (BPA), which is a persistent organic pollutant and an endocrine-disrupter compound. BPA slowly powders away into the pool water over time. These paints also increase waste because they come in two compartments.

Response: The commenter did not provide enough technical detail as to why reformulation of rubber-based swimming pool paints is not possible. In addition, MassDEP understands from another OTR state that progress is being made by the commenter to reformulate its rubber-based swimming pool paints to comply with the lower VOC standard. In addition, under the variance provision of the consumer products regulation, a manufacturer can request to postpone compliance with the VOC limits if compliance with the applicable VOC limit requirements is not feasible by the proposed effective date due to conditions that are not within the manufacturer's control and compliance with the limits would adversely affect the solvency of the company. Specific manufacturers may be able to obtain a variance if reformulation proves to be infeasible. Finally, in general swimming pool paints have successfully been reformulated to meet the lower VOC limits. Therefore, the final rule does not necessitate the use of epoxy- or water-based paints (and any related environmental concerns that these types of paints may pose), but the use of these types of paint would be determined by the specific application needed.

CHLORINATED SOLVENTS

15. Comment: MassDEP should withdraw the proposed restrictions set forth at 310 CMR 7.25(12)(a)11. and 310 CMR 7.25(12)(a)12., which ban use of trichloroethylene, perchloroethylene, and methylene chloride because these chlorinated solvents have non-flammable characteristics and their use may be necessary in some instances. MassDEP should consider safety concerns regarding flammability and allow manufacturers to continue to use certain chlorinated solvents to formulate Electrical Cleaners. MassDEP should consider excluding the electrical cleaners from the proposed ban on use of chlorinated solvents in product formulations since two of these three chemical compounds are necessary for production of a non-flammable product. By definition, electrical cleaners are used to remove oily grime or built-up soils from electrical equipment (e.g., electric motors, electric panels, and electric generators) without leaving a conductive residue. In many (if not most) instances, electrical cleaners are used on equipment with live or residual electrical charges. Therefore, it is essential that this narrowly-defined category of products have nonflammable and low conductivity characteristics.

Response: MassDEP has retained the ban on use of trichloroethylene, perchloroethylene, and methylene chloride from certain product categories, consistent with the California consumer products rule. When CARB amended its rule to include this provision, it was well aware of the safety concerns associated with electrical equipment with live electrical current or residual electrical potential and the need for use of certain chlorinated solvents in cleaning products that are used on such equipment. To meet this need CARB added a newly-defined consumer product category, "Energized Electrical Cleaners." The definitions for "Electrical Cleaners" and "Energized Electrical Cleaners" are mutually exclusive. The OTC model rule and MassDEP's final rule include the "Energized Electrical Cleaners" category and so already allow use of chlorinated chemicals in cleaning products that will be used on equipment with electrical current or residual electrical potential. In addition, these chlorinated solvents can pose significant health concerns and their use in consumer products should be limited whenever possible.

FIFRA-REGULATED PRODUCTS

16. Comment: It makes sense to have a one-year extension for compliance for products regulated under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) set forth in the MassDEP proposed regulations and the exemption from state mandated labeling requirements for FIFRA regulated products as set forth in 7.25(12)(a)7.b.

Response: MassDEP agrees with this comment.

EPA APPROVALS

17. Comment: The variance provisions of section 7.12(b) raise the Director's discretion issue. MassDEP should address this issue by inserting the following additional provision in section 7.12(b)(7):

“7. All variances, or modifications to variances, must be approved by EPA.”

Response: MassDEP has made this change in the final regulation.

18. Comment: The proposed requirements regarding alternative test methods for AIM coatings, 7.25(11)(d)(2) and (3) should be revised as follows:

“... The manufacturer may use U.S. EPA Method 24, an alternative test method as provided in 7.25(11)(d)(3), formulation data, or any other reasonable means (e.g. quality assurance records, recordkeeping) to determine the VOC content of the coating. However, if there are any inconsistencies between the results of a Method 24 test and any other means for determining VOC content, the Method 24 results shall govern except when an alternative method is approved as specified in 7.25(11)(d)(3) by EPA...”

“Other test methods demonstrated to provide results that are acceptable for purposes of determining compliance with 7.25(11)(d)(2) may be used provided that the manufacturer has received an approval from CARB for the alternative testing method to be used in architectural and maintenance coatings VOC content determination.”

Response: MassDEP has made these changes in the final regulations.

19. Comment: Section 12(c) of MassDEP's proposed rule contains an exemption for manufacturers who have been granted an exemption by CARB pursuant to the innovative products provisions of CARB's consumer products regulation. This raises the issue of Director's discretion, which MassDEP may rectify by ensuring that CARB's innovative product provisions have been approved by EPA. As stated in the Massachusetts rule, the criteria for granting an innovative products exemption is that the product results in less VOC emissions than the established standards. Therefore, as long as the innovative product has been approved by EPA for use in one state, that approval is sufficient for the product's use in Massachusetts. For example, if EPA approves an innovative products exemption issued by CARB, then that

innovative products exemption is also valid in Massachusetts (i.e., it does not need to also be submitted as a revision to the Massachusetts SIP). MassDEP should make the following change in section 12(c) of the rule:

“Any manufacturer of a consumer product which has been granted an Innovative Product exemption by CARB under the Innovative Products provisions in Subchapter 8.5, Article 2, Section 94511, or Subchapter 8.5, Article 1 Section 94503.5 of Title 17 of the California Code of Regulations, and such Innovative Products Exemption has been approved by EPA, shall be, for that product, exempt from the VOC limits in Table 2 in 7.25(12)(a)1.b. for the period of time that the CARB Innovative Products exemption remains in effect, ~~provided that the consumer product for which the manufacturer has received the CARB Innovative Product exemption is contained in Table 2 in 7.25(12)(a)1.b of this regulation.~~ Any manufacturer claiming an Innovative Product exemption on this basis must submit to the Department a copy of the CARB Innovative Product exemption decision (i.e., the Executive Order), including all conditions established by CARB applicable to the exemption.”

Response: MassDEP has made this change in the final rule.

ADMINISTRATIVE REQUIREMENTS

20. Comment: The state should work with U.S. EPA to impose standardized labeling requirements on AIM coatings that make it easier for users to determine with which state limits under which categories each product complies. For example, manufacturers could be required to print on their products language like: “This product is certified compliant with VOC limits for multi-color coatings in the states of California, Massachusetts, etc., ...” (or whichever type of coatings apply). Alternatively or perhaps additionally, the state should offer a registration program to AIM coating manufacturers such that any AIM coatings meeting the new limits could be on an approved list published or posted online by MassDEP by coating category.

Response: The AIM coatings rule requires manufacturers to provide VOC content information on the coating container (or label) so that users should be able to verify that the product meets regulatory requirements prior to application. In addition, a facility could specify compliance with the VOC content standards as a requirement in the request for proposal submitted to vendors. The upcoming EPA national AIM coatings rule provides the best opportunity to establish standardized labeling.

21. Comment: The labeling requirements for Specialty Primers, Sealers, and Undercoaters, specified in 310 CMR 7.25(11)(b)(5), should be amended by adding the phrase “To seal in efflorescence.” under 310 CMR 7.25(11)(b)(5)f.

Response: The commentator provided no reason as to why addition of this phrase is necessary. Neither the California nor the OTC Model Rule has this labeling requirement. Therefore, MassDEP has not added this phrase in order to be consistent with the labeling requirements in California and the other OTR States.

22. Comment: Section 7.25(12)(a)3.iv. requires the date of assembly if date codes for the individual containers in a multi-unit package are not visible through the package. Such packages are usually gift packages or special promotional packages that are available on a short-term basis. This provision could place considerable burdens on manufacturers. The provision does not provide any clear benefit, and such packaging should be subject to uniform requirements throughout the OTC region. In addition, the OTC model rule for consumer products does not include such a provision.

Response: Since MassDEP has adopted an indefinite sell-through provision for consumer products, the multi-unit package labeling requirement is no longer needed and has been eliminated.

23. Comment: In section 310 CMR 7.25(11)(b)1.a.ii., the proposed AIM coatings rule states that manufactures shall file a date-code explanation no later than twelve months prior to the effective date of the applicable standard. Since it is difficult to accurately anticipate the effective date of the Massachusetts AIM rule, this requirement should be changed so that manufacturers are required to file a date-code explanation by the effective date of the rulemaking.

Response: The proposed regulation made clear that the effective date of the amendments is January 1, 2009. The OTC AIM model rule does not specify a time frame for filing a date-code. However, MassDEP has changed the notification requirement in the final regulation so that manufacturers are required to file a date-code explanation by January 1, 2009.

24. Comment: It is questionable whether all information required in 7.25(11)(c), Recordkeeping and Reporting Requirements, is necessary. Massachusetts should instead adopt reporting requirements in line with most of the other OTC states (for example the requirements found in the Maine or Maryland AIM rules).

Response: MassDEP has not changed the AIM recordkeeping and requirements in the final regulation. MassDEP's requirements parallel the requirements in Maine's AIM coatings regulation, and are a streamlined version of the OTC AIM model rule requirements (which Maryland follows). For example, MassDEP's rule does not have reporting (and much of the associated recordkeeping) requirements for the following coating categories: Clear Brushing Lacquers; Rust Preventive Coatings; Specialty Primers, Sealers, and Undercoaters; Toxic Exempt Compounds (perchloroethylene or methylene chloride); Recycled Coatings; Bituminous Coatings. It also does not have the OTC model rule annual reporting of certain information prior to April 1 of each year for the previous year starting with the year after the effective date of the VOC standards. Finally, MassDEP's regulation only requires records to be submitted to MassDEP upon request and provides a 90-day lead-time for the manufacturer to submit this data. The information MassDEP does require for recordkeeping should be readily available to the manufacturer, and in most cases, normally would be part of the manufacturing or sales records.

25. Comment: 310 CMR 7.25(12)(e) and (f) impose a five-year recordkeeping requirement which is excessive and inconsistent with most normal business practices. These requirements should be limited to three years, which is consistent with the federal, OTC and California rules.

Response: MassDEP has changed the recordkeeping requirement to three years in the final rule. The proposed five-year recordkeeping requirement was from the existing MassDEP consumer products and AIM coating regulations. However, MassDEP believes three years is sufficient and has made the Massachusetts rules consistent with other OTR states to ease compliance by businesses.

ALTERNATIVE CONTROL PLAN (ACP)

26. Comment: MassDEP should include an ACP provision for consumer products in its final rule. An ACP provision is a key part of the CARB Rule and the OTC model rule, and has been adopted by the other OTC states. While this mechanism is not used very much today, this is a mechanism that will be extremely important and necessary as the air quality regulations for consumer products become more and more stringent over the years and it is reasonably foreseeable that reliance on ACPs will increase significantly in the near future. An ACP is essential to maintain a “level playing field” for manufacturers. Lack of the ACP option in Massachusetts would automatically put any manufacturer that already relies on an ACP elsewhere at a competitive disadvantage and at the risk of being unable to sell one or more products in Massachusetts.

Response: MassDEP originally did not include an ACP because California and many other OTC states already have adopted consumer product rules and it was anticipated that the new VOC limits would be very achievable since compliant products are already on the market. The need for an ACP program is more important when new VOC standards are technology forcing than in cases where compliant products already have been formulated and are on the market. MassDEP recognizes that there may be a need for ACPs as VOC limits are further regulated and believes there is benefit to being consistent with surrounding OTC states. However, because MassDEP did not propose to include an ACP provision in the draft regulation that went through the MGL c. 30A public hearing process, and because MassDEP indicated in the technical support document that it did not intend to adopt an ACP provision, MassDEP believes it is prudent to formally propose a draft ACP provision in accordance with MGL c. 30A prior to adopting an ACP provision. Therefore, MassDEP will develop a regulatory proposal for an ACP provision and any other regulatory changes to the Massachusetts consumer products rule that may be warranted, and will do this in the context of EPA's forthcoming national consumer products rule.

27. Comment: To provide more emissions benefits to the state, MassDEP should adopt a modified version of the OTC Model Rule's ACP provision as follows (modification is underlined):

“310 CMR 7.25(12)(g) Alternative control plan for consumer products.

1. Any manufacturer of consumer products which have been granted an ACP agreement by the CARB shall be exempt from the VOC limits specified in 7.25(12)(a)1. for the period of time that the CARB ACP agreement remains in effect provided that all ACP products used for emissions credits within the CARB ACP agreement are contained in 7.25(12)(a)1. Table 2. Any manufacturer claiming such an ACP agreement on this basis must submit to the director, a copy of the CARB ACP decision (i.e., the executive order), including all conditions established by CARB applicable to the exemption.”

Response: MassDEP will consider this comment when it proposes to add an ACP provision to its consumer products rule (see response to Comment 26).

TECHNICAL CORRECTIONS

28. Comment: There is a typographical error in the numbering in the section on Recordkeeping and Reporting Requirements, 310 CMR 7.25(11)(c).

Response: MassDEP has corrected the typographical error in the final regulation.

29. Comment: MassDEP should change the proposed VOC limit (340 g/l) for Rust Preventative Coatings to 400 g/l to be consistent with the national AIM coatings rule, the OTC Model Rule and the 2000 California Air Resources Board (ARB) AIM Suggested Control Measure (SCM).

Response: MassDEP has corrected the limit for Rust Preventative Coatings to 400 g/l in the final rule.

30. Comment: The VOC limit for nail polish remover in the OTC model rule is 75%. MassDEP should adopt this limit instead of the proposed 0%.

Response: The limit of 0% VOC that appeared in the proposed Table of Standards for the nail polish remover was a typographical error. MassDEP has corrected the limit to 75%.

31. Comment: Neither the OTC Model Rule nor any final OTR State regulation imposes a VOC limit for the “Air Fresheners -- Dual Purpose Freshener/Disinfectant” Category. MassDEP should follow the OTC Model Rule and delete this proposed VOC limit when promulgating the final rule.

Response: MassDEP included a limit for “Air Fresheners – Dual Purpose Freshener/Disinfectant” in early internal drafts of its rule but intended to remove it since it was not included in the final OTC model rule. MassDEP has deleted this subcategory and its limit in the final regulation.

32. Comment: The OTC model rule for consumer products contains a VOC content limit for structural waterproof adhesives, but MassDEP’s proposed rule does not include limits for this category. MassDEP should either include limits for this category or confirm that limits for these products were intentionally left out of the state’s rule.

Response: MassDEP has added the VOC limit into the table in the final rule.

33. Comment: There is an inadvertent reversal of the VOC limits for the “Non-Aerosol Rubber and Vinyl Protectant” and “Aerosol Rubber and Vinyl Protectant” subcategories in Table 2 of the proposed regulation. MassDEP should correct this error.

Response: MassDEP has corrected this typographical error in the final rule.

34. Comment: MassDEP should add a “Non-Flat High-Gloss” category to 310 CMR 7.25(11)(a)(5), “Coatings Not Listed in Table 1.”

Response: MassDEP has incorporated the “Non-Flat High-Gloss” Coatings category in the final regulation.

35. Comment: The following sentence from the definition of adhesives should be modified as follows:

“For Construction, Panel, and Floor Covering Adhesive, and General Purpose Adhesive only, “adhesive” does not include units of product, less packaging, which weigh more than one pound and consist of more than 16 fluid ounces ~~one gallon~~.”

Response: MassDEP has made this correction in the final regulation.

36. Comment: MassDEP should add the phrase “Not intended for residential use” to the Labeling Requirements for Industrial Maintenance Coatings, 310 CMR 7.25(11)(b)(2)(c) to be consistent with the OTC model rule.

Response: MassDEP has added this phrase to the final regulation.

37. Comment: As currently drafted, 7.25(12)(a)4.a.iv. (i.e., the exclusion provision that deals with air fresheners) deviates from the parallel provision in the OTC Model Rule. MassDEP should replace change this language as follows:

“Air fresheners that are comprised entirely of fragrance, ~~excluding less~~ compounds not defined as VOCs in 7.25(2) or exempted under 7.25(12)(a)4.a.i.”

Response: MassDEP has made this change in the final regulation.